

House Study Bill 548

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON PAULSEN)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the prosecution of certain criminal offenses
2 and the gathering of evidence for prosecution.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 5483HC 81
5 jm/je/5

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1 1 DIVISION I
1 2 SEPARATE CONVICTIONS
1 3 Section 1. Section 123.91, Code 2005, is amended to read
1 4 as follows:
1 5 123.91 SECOND AND SUBSEQUENT CONVICTION.
1 6 1. Any person who has been convicted, in a criminal
1 7 action, in any court of record, of a violation of a provision
1 8 of this chapter, a provision of the prior laws of this state
1 9 relating to intoxicating liquors, wine, or beer which was in
1 10 force prior to the enactment of this chapter, or a provision
1 11 of the laws of the United States or of any other state
1 12 relating to intoxicating liquors, wine, or beer, and who is
1 13 thereafter convicted of a subsequent criminal offense ~~against~~
1 14 in violation of any provision of this chapter is guilty of the
1 15 following offenses:
1 16 ~~1. a.~~ For the second conviction, a serious misdemeanor.
1 17 ~~2. b.~~ For the third and each subsequent conviction, an
1 18 aggravated misdemeanor.
1 19 2. Each previous violation, on which conviction or
1 20 deferral of judgment was entered prior to the date of the
1 21 offense charged, shall be considered and counted as a separate
1 22 previous conviction.

1 23 Sec. 2. Section 124.401, subsection 5, Code 2005, is
1 24 amended to read as follows:
1 25 5. a. It is unlawful for any person knowingly or
1 26 intentionally to possess a controlled substance unless such
1 27 substance was obtained directly from, or pursuant to, a valid
1 28 prescription or order of a practitioner while acting in the
1 29 course of the practitioner's professional practice, or except
1 30 as otherwise authorized by this chapter. Any person who
1 31 violates this subsection is guilty of a serious misdemeanor
1 32 for a first offense. A person who commits a violation of this
1 33 subsection and who has previously been convicted of violating
1 34 this chapter or chapter 124A, 124B, or 453B is guilty of an
1 35 aggravated misdemeanor. A person who commits a violation of
2 1 this subsection and has previously been convicted two or more
2 2 times of violating this chapter or chapter 124A, 124B, or 453B
2 3 is guilty of a class "D" felony.
2 4 b. If the controlled substance is marijuana, the
2 5 punishment shall be by imprisonment in the county jail for not
2 6 more than six months or by a fine of not more than one
2 7 thousand dollars, or by both such fine and imprisonment for a
2 8 first offense. If the controlled substance is marijuana and
2 9 the person has been previously convicted of a violation of
2 10 this subsection in which the controlled substance was
2 11 marijuana, the punishment shall be as provided in section
2 12 903.1, subsection 1, paragraph "b". If the controlled
2 13 substance is marijuana and the person has been previously
2 14 convicted two or more times of a violation of this subsection
2 15 in which the controlled substance was marijuana, the person is
2 16 guilty of an aggravated misdemeanor.
2 17 c. All or any part of a sentence imposed pursuant to this
2 18 subsection may be suspended and the person placed upon

2 19 probation upon such terms and conditions as the court may
2 20 impose including the active participation by such person in a
2 21 drug treatment, rehabilitation or education program approved
2 22 by the court.

2 23 d. If a person commits a violation of this subsection, the
2 24 court shall order the person to serve a term of imprisonment
2 25 of not less than forty-eight hours. Any sentence imposed may
2 26 be suspended, and the court shall place the person on
2 27 probation upon such terms and conditions as the court may
2 28 impose. If the person is not sentenced to confinement under
2 29 the custody of the director of the department of corrections,
2 30 the terms and conditions of probation shall require submission
2 31 to random drug testing. If the person fails a drug test, the
2 32 court may transfer the person's placement to any appropriate
2 33 placement permissible under the court order.

2 34 e. If the controlled substance is amphetamine, its salts,
2 35 isomers, or salts of its isomers, or methamphetamine, its
3 1 salts, isomers, or salts of its isomers, the court shall order
3 2 the person to serve a term of imprisonment of not less than
3 3 forty-eight hours. Any sentence imposed may be suspended, and
3 4 the court shall place the person on probation upon such terms
3 5 and conditions as the court may impose. The court may place
3 6 the person on intensive probation. However, the terms and
3 7 conditions of probation shall require submission to random
3 8 drug testing. If the person fails a drug test, the court may
3 9 transfer the person's placement to any appropriate placement
3 10 permissible under the court order.

3 11 f. Each previous violation of this subsection on which
3 12 conviction or deferral of judgment was entered prior to the
3 13 date of the offense charged shall be considered and counted as
3 14 a separate previous conviction.

3 15 Sec. 3. NEW SECTION. 714.2A SEPARATE CONVICTIONS.
3 16 Each previous violation of this chapter on which conviction
3 17 or deferral of judgment was entered prior to the date of the
3 18 offense charged shall be considered and counted as a separate
3 19 previous conviction.

3 20 DIVISION II
3 21 SERIOUS INJURY == OWI

3 22 Sec. 4. Section 321J.10, subsection 1, paragraph a, Code
3 23 2005, is amended to read as follows:

3 24 a. A traffic accident has resulted in a death or ~~personal~~
3 25 ~~injury reasonably likely to cause death~~ serious injury.

3 26 Sec. 5. Section 321J.10A, subsection 1, unnumbered
3 27 paragraph 1, Code 2005, is amended to read as follows:

3 28 Notwithstanding section 321J.10, if a person is under
3 29 arrest for an offense arising out of acts alleged to have been
3 30 committed while the person was operating a motor vehicle in
3 31 violation of section 321J.2 or 321J.2A, and that arrest
3 32 results from an accident that causes a death or ~~personal~~
3 33 ~~injury reasonably likely to cause death~~ serious injury, a
3 34 chemical test of blood may be administered without the consent
3 35 of the person arrested to determine the amount of alcohol or a
4 1 controlled substance in that person's blood if all of the
4 2 following circumstances exist:

4 3 EXPLANATION

4 4 This bill relates to the prosecution of certain criminal
4 5 offenses and the gathering of evidence for prosecution.

4 6 Under the bill, a person may be charged with another
4 7 criminal offense if the person has a previous violation on
4 8 which conviction or deferral of judgment was entered prior to
4 9 the date of the current offense charged for the following
4 10 offenses: public intoxication (Code section 123.91),
4 11 possession of a controlled substance offense (Code section
4 12 124.401(5)), and any theft in violation of Code section 714.7D
4 13 or Code section 714.26.

4 14 Under the bill, a person who is alleged to be operating a
4 15 motor vehicle while intoxicated may be required to submit to a
4 16 chemical test of blood, without the consent of the person, if
4 17 the person is involved in an accident that causes death or
4 18 serious injury. "Serious injury" is defined in Code section
4 19 321J.1, subsection 9, to mean a bodily injury which creates
4 20 substantial risk of death, or which causes serious permanent
4 21 disfigurement, or which causes protracted loss or impairment
4 22 of the function of any bodily organ or major bodily member, or
4 23 which causes the loss of any bodily member. Current law
4 24 provides the person may be required to submit to a chemical
4 25 test of blood, without the consent of the person, if the
4 26 person is involved in an accident that causes death or
4 27 personal injury reasonably likely to cause death.

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